
EXPLANATORY NOTE

(This note is not part of the Order)

These Regulations prescribe types of information which the Northern Ireland Authority for Utility Regulation (“the Authority”) or the holder of a gas or electricity licence (“a licence holder”) may refuse to supply under Article 24, and the General Consumer Council for Northern Ireland (“the Council”) may refuse to supply under Article 26, of the Energy (Northern Ireland) Order 2003 (“the Order”). They also prescribe circumstances in which the Authority or a licence holder may refuse to comply with a direction under Article 24, or the Council may refuse to comply with a direction under Article 26, of the Order.

Under Article 24 of the Order, the Council may direct the Authority or a licence holder to supply such information as it may require for the purposes of exercising its functions. Under Article 26 of the Order, the Authority may direct the Council to supply such information as it may require for the purpose of exercising its functions.

The Authority or a licence holder (under Article 24 of the Order) or the Council (under Article 26 of the Order) may refuse to supply information the making public of which would be against the interests of national security (Regulation 3).

The Authority or a licence holder may refuse to supply price sensitive information to the Council under Article 24. Price sensitive information is defined in the same terms as in Part V of the Criminal Justice Act 1993 which covers the criminal offence of insider dealing (Regulation 4).

The Authority may refuse to supply to the Council under Article 24 any information which is subject to a statutory restriction on disclosure and which was disclosed to the Authority by virtue of an exemption to that statutory restriction and any information which it obtained in the exercise of various functions under the Enterprise Act 2002 and Competition Act 1998, being functions which the Authority exercises concurrently with the Office of Fair Trading (Regulation 5(1)).

The Authority or a licence holder under Article 24 of the Order, or the Council under Article 26 of the Order, may refuse to supply any information whose disclosure is prohibited under any other statutory provisions or whose disclosure is incompatible with any Community obligation (Regulation 5(2)).

The Authority, a licence holder or the Council may refuse to supply information which is personal data protected by the Data Protection Act 1998, but not where it relates to a person whose complaint is being investigated by the Council in accordance with the Council’s duty to investigate a consumer complaint under the Order (Regulation 5(3)).

The Authority, a licence holder or the Council may refuse to supply information whose disclosure would constitute or be punishable as contempt of court; or would prejudice or would be likely to prejudice any criminal proceedings. The Authority may also refuse to supply information which would prejudice or would be likely to prejudice any enforcement action against licence holders such as the making of compliance orders or the imposition of financial penalties. Additionally, a licence holder may refuse to supply information under Article 24 of the Order which could not be compelled from him in civil proceedings (Regulation 6).

The Authority or a licence holder under Article 24 of the Order, or the Council under Article 26 of the Order, may refuse to supply any information concerning discussions or deliberations as to a decision or action which is yet to be taken. The Authority or a licence holder under Article 24 of the Order, or the Council under Article 26 of the Order, may refuse to supply any information concerning discussions or deliberations as to a decision or action which has been taken but which

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has not yet been announced or published. However, in neither case can a licence holder withhold any such information that is relevant to a consumer complaint being investigated by the Council.

The Authority, a licence holder or the Council may refuse to supply information concerning:

- (a) the views of the Authority or a licence holder on its relationship with the Council or the Council's performance of its functions; or
- (b) the views of the Council on its relationship with the Authority or the performance by the Authority of its functions.

The Authority may furthermore refuse to supply under Article 24 of the Order information obtained from confidential sources for the purposes of any criminal proceedings which the Authority has power to conduct or any enforcement action under the Order (Regulation 7).

A licence holder may refuse to supply information under Article 24 of the Order where the cost or other burden of providing that information would be excessive in relation to the likely benefit of the information to the Council (Regulation 8).

A person may refuse to comply with a direction given under Article 24 or 26 if he does not hold the information in question. Holding information is defined for these purposes (Regulation 9).

A licence holder cannot by virtue of these Regulations refuse to supply under Article 24 of the Order information whose supply the Council has directed for the purposes of the Council's functions under Article 20 of the Order to publish statistical information relating to consumer complaints (Regulation 10).

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